

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 11, 2001**

The following highlights actions taken by the North Carolina Alcoholic Beverage Control Commission. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Chairman George F. Bason and Commission Member Ricky Wright were present for the entire meeting.

WAIVE READING OF APRIL 6, 2001 MINUTES

Chairman Bason made a motion seconded by Commissioner Wright to waive the reading of the minutes into the record. So Ordered.

EXECUTIVE ORDER 127 - CONFLICT OF INTEREST

As required by Executive Order 127 Chairman Bason asked the members whether there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. Chairman Bason stated he found no conflict of interest. Commissioner Wright stated he had reviewed the agenda and found no conflicts of interest. So Ordered.

HEARING CASES - 80 listed (including add-on cases).

I. CONTESTED CASES

- A. #1 – Brewery. Charles Kenneth Hobby, President, was present and made no comments. Exceptions were filed in this contested case. Assistant Administrator Doyle Alley had a suggestion regarding this alleged violation. Mr. Alley met with Assistant Counsel LoRita Pinnix and Chief Deputy Fred Gregory regarding a settlement. Ms. Pinnix spoke to Mr. Hobby concerning the proposed settlement and Mr. Hobby was in agreement. An offer was typed and submitted to Mr. Hobby for his signature. Chairman Bason moved to approve this settlement and Commissioner Wright seconded. So ordered.
- B. #2 – Ralph's Place. Ms. Pinnix recommended that the Commission not follow the Administrative Law Judge's decision because Respondent's request did not rise to the level of undue hardship. The Commission's recommendation was that Respondent turn in his malt beverage permit for cancellation on or before June 1, 2001. If not submitted by this date, the permit shall be revoked effective June 8, 2001. Chairman Bason moved to approve this recommendation and Commissioner Wright seconded. So ordered.

- C. #3 – Xcapades. The Administrative Law Judge recommended no action due to undue hardship. The Commission rejected the Administrative Law Judge's recommendation and recommended a 30-day active suspension of Respondent's permits and a monetary penalty in the amount of \$5,000.00. Chairman Bason moved to approve this recommendation and Commissioner Wright seconded. So ordered.
 - D. #54 – One Stop Grocery. This was originally to be a contested case but a proposed settlement was reached between the Respondent and Mr. Gregory. A 10-day active suspension was agreed upon between the two parties. Chairman Bason moved to approve this settlement and Commissioner Wright seconded. So ordered.
- II. ABC Store Location - Mecklenburg County. Administrator Michael Herring presented information regarding an investigation concerning a new store location and advised that the Mecklenburg County ABC Board is requesting approval to relocate its Store #6 from 5124 Park Road, NC, to 4329 Park Road in the Park Road Shopping Center. The new location is properly zoned and is in accordance with ABC Commission regulations. A sign regarding notice of intent to open an ABC store has been posted over 30-days. To date no objections had been received regarding the new location. All members of the ABC Board and the Chairman of the County Commissioners were interviewed. No conflict of interest exists between the parties. There were no complaints nor questions from any of the members regarding this store relocation. There was one telephone complaint received, against alcoholic beverages, but no written complaints. Mr. Herring made a recommendation to approve the location. Chairman Bason made a motion that the proposed site be approved and Commissioner Wright seconded. So ordered.
- III. ABC Store Location – Reidsville ABC Board. Administrator Michael Herring presented information regarding an ABC store relocation in Reidsville, NC. ALE District VI conducted an investigation concerning the new store location and advised that the Reidsville ABC Board is requesting approval to relocate its store from 337 S. Scales Street, Reidsville, NC, to a proposed site at Hwy 14 and Hwy 29. The new location is properly zoned and is in accordance with ABC Commission regulations. A sign regarding notice of intent to open an ABC store has been posted over 30-days. To date no objections had been received regarding the new location. All members of the ABC Board and the City Council were interviewed. No conflict of interest exists between the parties. There were no complaints nor questions from any of the members regarding this store relocation. Mr. Herring made a recommendation to approve the location. Chairman Bason made a motion that the proposed site be approved and Commissioner Wright seconded. So ordered.

- IV. Request for exemption from G.S. 18B-1116(a)(3) by Empire Distributors. General Counsel Ann Fulton stated Empire Distributors wants to re-employ former employee James McGrady. Ms. Fulton recommended the exemption be approved providing that Mr. McGrady does not have a relationship with City Wine Seller in Elizabeth City and no other owners/employees of City Wine Seller purchase alcoholic beverages from Empire Distributors. Chairman Bason moved the authorization be approved seconded by Commissioner Wright. All three copies of the proposed Order were signed and submitted to the Commission secretary. See attachment.
- V. Request for exemption by Cerminaro Vineyard and Joseph John Cerminaro for Wholesaler Permit. General Counsel Fulton stated Cerminaro would like to wholesale wine and this request was identical to previous requests granted. Chairman Bason made a motion the exemption be granted and asked Commissioner Wright if he had any questions and/or comments; Commissioner Wright had none. Chairman Bason moved the authorization be approved seconded by Commissioner Wright. All three copies of the proposed Order were signed and submitted to the Commission secretary. See attachment.
- VI. Declaratory Ruling Regarding 3-day Waiting Period – Continued until next Commission meeting.
- VII. Awarding of North Carolina ABC Warehouse Contract (RFP #43-2881-01) - Continued until next Commission meeting.

REMAINING OFFERS IN COMPROMISES:

- 1. #9 – Handi Cupboard. Assistant Counsel Pinnix spoke on behalf of case #9 stating the permittee had been in business for 15 years with only one previous violation and was asking for some consideration in this matter. Chairman Bason made a motion that the penalty be reduced by 50% (\$350.00) and that the offer be approved seconded by Commissioner Wright. So ordered.
- 2. #71 – Reilly Road Amoco. Assistant Counsel Tim Morse spoke on behalf of case #71 stating the permittee had been in business for 17 years with no previous violations and was asking for some consideration in this matter. Chairman Bason made a motion that the penalty be reduced by 50% (\$400.00) and that the offer be approved seconded by Commissioner Wright. So ordered.

3. #5 – Cloverleaf Food Mart. Assistant Counsel Pinnix spoke on behalf of case #5 stating the permittee had been in business for 13 years with no previous violations and was asking for some consideration in this matter. Chairman Bason made a motion that the penalty be reduced by 50% (\$400.00) and that the offer be approved seconded by Commissioner Wright. So ordered.
4. Chairman Bason commented there was no signature for #53 – Brightleaf Billiards. Assistant Counsel Morse advised the offer had no valid signature and requested it be continued. Chairman Bason and Commissioner Wright were in agreement with the continuation.
5. The Commission members had no questions nor comments concerning any other cases as submitted. Chairman Bason made a motion that all remaining cases be approved and ratified. Commissioner Wright seconded the motion and agreed. So ordered.

VIII. OTHER BUSINESS

No other business, new or old, to be heard.

WITH NO further business the meeting adjourned.

George F. Bason, Chairman

Respectfully submitted by

Theresa D. Avery, Legal Division

5/22/01